



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 20, 1995

Mr. Randel B. Gibbs
Law Offices of Earl Luna, P.C.
4411 Central Building
4411 N. Central Expressway
Dallas, Texas 75205

OR95-1525

Dear Mr. Gibbs:

You seek reconsideration of Open Records Letter No. 95-240 (1995), in which this office determined that the Texas Open Records Act, Government Code chapter 552, required the Denton Central Appraisal District (the "appraisal district") to make certain information available to the public. We have assigned your request for reconsideration ID# 34000.

The appraisal district, which you represent, received a request to copy the appraisal district's computer backup tapes with the requestor's own equipment. You sought to withhold the requested information under sections 552.101, 552.104, and 552.110 of the Government Code. One of the software companies whose information was requested submitted a response, claiming that its software on the backup tapes is proprietary and should be excepted from disclosure because its release would violate the license and copyright provisions of the agreement between the company and the appraisal district. We concluded in Open Records Letter No. 95-240 (1995) that none of the claimed exceptions protected the requested information from public disclosure.

We based our ruling in Open Records Letter No. 95-240 (1995) on your failure to explain how any of the claimed exceptions applied to the appraisal district's backup computer tapes and on the software company's failure to demonstrate how the tapes were excepted from required public disclosure. Additionally, you did not submit the information at issue to this office for review. Without an explanation as to how the exceptions applied to the requested information and without being able to review at least a representative sample of the requested information, we were unable to conclude that any of the claimed exceptions applied.

We have examined your request for reconsideration. Although you have provided us with additional arguments in an attempt to demonstrate the applicability of section 552.110 to the requested information, you again have failed to provide at least a representative sample of the information at issue to this office. After receipt of the appraisal district's request for reconsideration, this office requested that the appraisal district submit the information at issue for our review. Under the Open Records Act, the governmental body bears the burden of showing which exceptions apply to specific information and why. Attorney General Opinion H-436 (1974); Open Records Decision No. 195 (1978). As we stated in Open Records Letter No. 95-240 (1995), without being able to review the information on the tapes, or at least a representative sample of the information, we are unable to determine whether the computer tapes contain confidential information. In a letter dated June 21, 1995, you, on behalf of the appraisal district, requested that the appraisal district be excused from furnishing the requested information. We are unable to grant that request. The legislature has mandated that this information be submitted to this office for review. Gov't Code § 552.303.¹ Consequently, every governmental body that seeks an opinion from this office must submit the specific information requested or representative samples of the requested information.

In this instance, the requestor seeks to have access to the information with his own equipment to make his own copies. In a previous Attorney General Opinion, this office concluded that "requests from members of the public to copy public records with their own equipment may be denied when the requests raise questions of safety or efficiency or threaten the unreasonable disruption of the business of the governmental body." Attorney General Opinion JM-757 (1987) at 5. If the appraisal district concludes that it does not have the physical characteristics necessary to comply with the request or that the information would not be safe, the appraisal district may deny the requestor's request.² We otherwise decline to reconsider our ruling in Open Records Letter No. 95-240 (1995).

If you have any questions regarding this ruling, please contact this office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

¹We note that this requirement is now found in section 552.301(b)(3) of the Government Code, as amended in the last legislative session. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 19, 1995 Tex. Sess. Law Serv. 5127, 5139 (Vernon) (to be codified as Gov't Code § 552.301(b)(3)).

²We note that in the original ruling, we concluded that if part of the requested information is confidential by law, the appraisal district may not permit the requestor to copy the back-up tapes, since in doing so, the requestor would have access to confidential information. This is still true.

SES/rho

Ref.: ID# 34000

cc: Mr. Al Brewster
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